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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,301	01/05/2005	Steffen Wuensch	3166	5073
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743		08/07/2007	EXAMINER NASH, BRIAN D	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/520,301

Applicant(s)

WUENSCH, STEFFEN

Examiner

Brian Nash

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner's Comments

1. This action is in response to applicant's amendment received 5/30/2007. The pending claims remain 1-10.
2. Applicant's amendment has remedied all matters pertaining to indefiniteness in the previous office action and the rejections made under the second paragraph of 35 U.S.C. 112 are hereby withdrawn.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,641,634 to Reich et al. Reich et al (including common inventorship and common assignee) discloses the same invention:

With respect to claims 1 and 2, a tool (10), with housing (12) including a motor (undesignated) and a cooling-air exhaust duct (20), a suction connecting piece (22) that is capable of guiding a chip-suctioning flow (27) and is connected to a dust box (21) having air holes (40). The Examiner notes that flow of air through the tool of Reich et al may follow one of several separate physical paths, i.e. one path of air may be exhausted and exit out an air hole near a proximal end of the dust box and another path of air may flow through the entire length of the dust box and exit through an air exit hole at the distal end of the dust box.

With respect to claim 3, the tool (10) is capable of having air flow through (27) that performs both a chip-suctioning function and an exhaust cooling function, i.e. ambient air flows into the tool through the bottom of (16 – see Fig. 1) and in doing so the air flow both cools the motor and collects

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dust and debris as the flow continues along (see 27 in Fig. 1). There are multiple holes (40) through which the air can exit the tool and which are partitioned from each other.

With respect to claim 4, the dust box (21) is basically airtight except for its inlet flow (27) and exhaust flow (via holes 40). The holes (40) are located all over the box top surface including its back end.

With respect to claim 5, the suction-connecting piece (22) has an inlet opening for cooling exhaust air (as explained above with respect to claim 3) and which such cooling exhaust air is guided to flow and exit through the top of the dust box.

With respect to claim 6, the dust box (21) includes a coupling branch (28,29 of Fig. 3) for connection with the suction connecting piece (22) and the structure for guiding both the chip suctioning flow and cooling exhaust air flow.

With respect to claims 7 and 8, the dust box (21) is detachable from the tool and has a detachable cover (23).

With respect to claims 9 and 10, the physical duct (20) is larger than the cross section that precedes it and smaller than the cross section that is downstream and therefore both the cooling air exhaust flow and the chip suctioning flow experience an enlarged funnel affect.

Response to Arguments

5. *In re* claim 1 applicant's arguments filed 5/30/2007 have been fully considered but they are not persuasive. Applicant contends, *inter alia*, that Reich et al does not perform the same function as the claimed invention. Examiner acknowledges applicant's position; however, a reference is deemed to properly anticipate a claim when all the recited limitations are disclosed therein. In this instance, Reich et al clearly shows all the recited structural limitations including a power tool anticipating all the claimed structure. Specifically, a cooling-air exhaust duct (20) and a suction connecting piece (22) that is capable of guiding a chip-suctioning flow (27 – see Fig. 1) and is connected to a dust box (21) having air holes. The Examiner further notes that the last several lines of claim 1 do not positively further limit the structure of the claimed apparatus. While features of an apparatus may be recited either structurally or

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functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. While it is noted that the device of Reich et al may not perform the same function or in the same manner as applicant's invention, it is deemed that the claims are not restrictive to such device.

For the reasons above, the grounds for rejection are deemed proper.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 6 p.m.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467. The official fax number for this Group is: 571-273-8300
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Brian D. Nash/
Primary Examiner, Art Unit 3721

8/4/2007